

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

RICKEY BURKS)	
Claimant)	
VS.)	
)	Docket No. 1,059,879
CITY OF NICKERSON)	
Respondent)	
AND)	
)	
CONTINENTAL WESTERNS INSURANCE CO.)	
Insurance Carrier)	

ORDER

Respondent and its insurance carrier (respondent) request review of the April 13, 2012, preliminary hearing Order entered by Administrative Law Judge Thomas Klein (ALJ).

RECORD

The Board has considered the same record as did the ALJ, consisting of the preliminary hearing transcript from April 11, 2012, and the exhibits attached, as well as the documents filed of record with the Division.

ISSUES

The ALJ determined that the restriction slips claimant provided to respondent constitute evidence of timely written claim and ordered Dr. Do to see claimant for an Independent Medical Evaluation (IME) to determine treatment recommendations for claimant's shoulder.

The respondent requests review, arguing that claimant failed to provide timely written claim for compensation within the meaning of K.S.A. 44-520a, and thus is statutorily unable to maintain any proceedings for compensation. Respondent's issue is whether claimant provided timely written claim.

Claimant contends that the medical reports from Dr. Janzen were submitted to notify respondent that he was receiving and was requesting medical treatment for the injuries

suffered on June 23, 2010. Therefore, the reports would constitute written claim for the purposes of the Kansas Workers Compensation Act (Act). Claimant argues the Order should be affirmed.

FINDINGS OF FACT

After reviewing the record compiled to date, the undersigned Board Member concludes the preliminary hearing Order should be affirmed.

Claimant injured his left shoulder and right thumb during the course of his participation in the Police Academy¹ for respondent on June 23, 2010. Respondent voluntarily provided treatment for a period of time. Claimant was released at maximum medical improvement on July 12, 2011, for the right thumb and January 4, 2011, for the left shoulder.

Respondent argues that claimant's treatment and release at maximum medical improvement was 200 days past the date of accident and that no timely claim was filed.

Claimant filed a claim for workers compensation on February 29, 2012, claiming a date of accident of June 23, 2010.

Claimant testified that when he injured his shoulder at the academy, he reported it to his supervisor, Jack and to the police chief, April Addis. Claimant was provided with treatment for his shoulder beginning in July 2010. Claimant met with Dr. Verlin Janzen on July 28, 2010. Claimant presented respondent with his work status report from Dr. Janzen within hours of receiving it. He also presented to respondent the Medical Verification of Physical Ability form that his supervisor gave him to have Dr. Janzen fill out.

Claimant met with Dr. Janzen several more times and received work status forms at every visit, which claimant turned into respondent. Claimant testified that by turning in these forms to Jack and April, it was his intention to notify respondent that he was receiving and was requesting workers compensation benefits.²

Claimant testified that he continued to have problems his shoulder after he was released. He testified that he does not have full use of his shoulder, which poses problems since he is left-handed. Claimant reported his ongoing symptoms to Suzanne at the insurance company. Claimant asked for additional treatment because he wanted to obtain a second opinion. He was told that the insurance company would not be funding any more appointments. Claimant discussed getting his own attorney and of wanting to see his

¹ This was 14 week program beginning April 20, 2010.

² P.H. Trans. at 13.

family physician, Dr. Anthony K. Jackson. Respondent advised claimant that it would not pay for medical treatment with Dr. Jackson. Claimant last saw Dr. Janzen on July 12, 2011 and was first examined by Dr. Jackson on December 13, 2011. The conversation with Suzanne occurred at an unspecified date between the two exam dates.

Claimant, on his own, went to see Dr. Jackson, who ordered an MRI of the left shoulder. Claimant was then referred by Dr. Jackson to Dr. Goin, who read the MRI and determined claimant had a small tear in his rotator cuff. Dr. Goin recommended physical therapy. Claimant had one session and then was told not to go any more until everything was situated.

Claimant stopped working for respondent on November 15th or 19th of 2010. He then obtained a job at a local NAPA Auto Parts store on March 26, 2011. Claimant's job was to deliver auto parts. His work hours varied from 20 to 40 hours a week.

Claimant testified that he never wrote anything himself requesting workers compensation. The first time claimant had anyone submit anything in writing on his behalf requesting workers compensation was on February 29, 2012, when he hired Mr. Bretz and a claim was filed on his behalf.³ Claimant then testified that he believed when he turned in his slips to respondent from Dr. Janzen that it was assumed he was both receiving and requesting workers compensation benefits.⁴

PRINCIPLES OF LAW AND ANALYSIS

In workers compensation litigation, it is the claimant's burden to prove his or her entitlement to benefits by a preponderance of the credible evidence.⁵

The burden of proof means the burden of a party to persuade the trier of fact by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record.⁶

K.S.A. 44-520a(a) states:

No proceedings for compensation shall be maintainable under the workmen's compensation act unless a written claim for compensation shall be served upon the employer by delivering such written claim to him or his duly authorized agent, or by

³ P.H. Trans. at 30-31.

⁴ P.H. Trans. at 13, 31.

⁵ K.S.A. 44-501 and K.S.A. 44-508(g).

⁶ *In re Estate of Robinson*, 236 Kan. 431, 690 P.2d 1383 (1984).

delivering such written claim to him by registered or certified mail within two hundred (200) days after the date of the accident, or in cases where compensation payments have been suspended within two hundred (200) days after the date of the last payment of compensation; or within one (1) year after the death of the injured employee if death results from the injury within five (5) years after the date of such accident.⁷

Claimant contends that the medical reports from Dr. Janzen constitute written claim for the purposes of the Act. Respondent contends the medical reports are nothing more than reports of claimant's progress and treatment. However, a written claim need not take any particular form, so long as it is in fact a claim.

The question is, did the employee have in mind compensation for his injury when the instrument was signed by him or on his behalf, and did he intend by it to ask his employer to pay compensation?⁸

The Board must look to the intention of the claimant to determine what was in his mind in presenting the document. Here claimant presented the report from Dr. Janzen intending to inform respondent of the medical treatment he was receiving and the future medical treatment that he was requesting. While the July 28, 2010 report returns claimant to work full duty, it also indicates a follow-up appointment in one month. Not until the January 4, 2011 report is claimant returned to work without note of a follow-up appointment.

The Board has held that the presentation of a medical report, with the intention to claim workers compensation benefits, satisfies the requirements of the written claim statute.⁹ This Board Member finds that claimant presented the reports from Dr. Janzen, beginning with the July 28, 2010, report for the purpose of both advising respondent of the medical treatment being provided and of future treatment being requested. Therefore, the requirements of K.S.A. 44-520a(a) have been satisfied, for preliminary hearing purposes.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.¹⁰ Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2011 Supp. 44-551(i)(2)(A), unlike appeals of final orders, which are considered by all five members of the Board.

⁷ K.S.A. 44-520a(a).

⁸ *Fitzwater v. Boeing Airplane Co.*, 181 Kan. 158, 309 P.2d 681 (1957).

⁹ *Camp v. Bourbon County*, No. 1,001,697 & 1,044,337, 2010 WL 3093216 (WCAB July 30, 2010).

¹⁰ K.S.A. 44-534a.

CONCLUSIONS

Claimant has satisfied his burden of proving that timely written claimant was provided pursuant to K.S.A. 44-520a(a). The Order of the ALJ is affirmed.

DECISION

WHEREFORE, it is the finding, decision and order of the undersigned Board Member that the Order of Administrative Law Judge Thomas Klein dated April 13, 2012, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of June, 2012.

HONORABLE GARY M. KORTE
BOARD MEMBER

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Thomas Klein, Administrative Law Judge